

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Judith Venturini
310 Mulberry Street
Lewes, DE 19958

Robert V. Witsil, Jr., Esquire
120 South Bedford Street
P.O. Box 799
Georgetown, DE 19947

Re: ***Venturini v. UIAB and Fajita Nation***
C.A. No. S10A-12-004 RFS

Appeal from a Decision of the UIAB. Affirmed.

Submitted: June 28, 2011
Decided: August 15, 2011

Dear Ms. Venturini, Mr. Witsil and Ms. Fortune:

This is an appeal from a decision of the Unemployment Insurance Appeal Board (“Board”) filed by Judith B. Venturini (“Claimant”). The sole issue before the Court is whether Claimant made a timely appeal of the Claims Deputy’s decision denying her petition for unemployment benefits, pursuant to 19 *Del. C.* §3318(b). That section provides in part that “Unless a claimant. . . files an appeal within 10 calendar days after such Claims Deputy’s determination was mailed to the last known addresses of the claimant and the last employer, the Claims Deputy’s determination shall be final and

benefits shall be paid or denied in accordance therewith.”

Claimant filed a timely opening brief with the Court. The Board’s attorney informed the Court by letter that the Board would not file an answering brief and presented a short summary of the case. Employer Fajita Nation LLC, represented by counsel, adopted the position of the Board expressed in its letter.

On appeal from a decision of the Board, this Court determines whether the Board’s decision is supported by substantial evidence and is free from legal error.¹

The record shows the following facts. The claims deputy’s decision was mailed to Claimant’s record address on January 4, 2010, but was returned as undeliverable. The returned letter included a new address for Claimant, but the decision was not re-mailed. The Department of Labor (“DOL”) may not change a claimant’s address without authorization by the claimant, as attested to by a DOL representative before the appeals referee. Claimant had her mail forwarded to a different address but did not change her address with the DOL.

In November 2010, Claimant filed her appeal of the January 4, 2010 decision. The claims deputy informed her by letter that the decision had become final on January 14, 2010. Claimant appealed.

An appeals referee held a hearing on the issue of timeliness. Claimant and a DOL representative testified. The appeals referee affirmed the claims deputy. The Board

¹Title 19 *Del. C.* § 3323(a); *Starkey v. Unemployment Ins. Appeal Bd.*, 340 A.2d 165, 166 (Del.Super. 1975), *aff’d* 364 A.2d 651 (Del. 1976).

affirmed, and Claimant filed an appeal in this Court.

Claimant argues that her late appeal was excusable because she made good faith efforts to explain her case to DOL and to follow the procedural requirements. She acknowledges not changing her address with DOL because she relied on the USPS to follow the forwarding procedure.

In denying the application for further review, the Board found no error on the part of DOL because the claims deputy's decision was mailed to her address of record. The Board also found that the late appeal was unrelated to any factor within the control of the DOL and therefore declined to re-open the case, pursuant to 19 *Del. C.* § 3320(a).

As discussed above, the record evidence provides substantial evidence to support the Board's findings. The Board did not abuse its discretion or make other legal error.

The Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Katisha D. Fortune, Esquire
Prothonotary